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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 ANITA KHANDELWAL,

9 Plaintiff,

10 v.

11 KING COUNTY, et al.,

12 Defendants.

13 CASE NO. C21-5314 BHS

14 ORDER GRANTING PLAINTIFF'S
15 MOTION FOR LEAVE TO AMEND
16 COMPLAINT

17 This matter comes before the Court on Plaintiff Anita Khandelwal's, Director,
18 King County Department of Public Defense, motion for leave to file amended complaint.
19 Dkt. 6. The Court has considered the motion, the briefing, and the remainder of the file
20 and hereby grants the motion for the reasons stated herein.

21 **I. PROCEDURAL HISTORY**

22 Khandelwal filed her complaint on April 9, 2021 in the Superior Court for the
State of Washington, Pierce County. Dkt. 1-2. She alleges that the King County
Prosecuting Attorney's Office's practice of seeking to change conditions of pretrial
release *ex parte* violates the Department of Public Defense's clients' constitutional,
statutory, and court-rule created rights. Specifically, she alleges violations of the Sixth

1 Amendment's and Article I, Section 22 of the Washington Constitution's right to counsel,
2 the due process protections in the Fifth and Fourteenth Amendments and Article I,
3 section 1 of the Washington Constitution, and violation of Washington State Court Rule
4 3.1. On April 29, 2021, Defendants King County Superior Court, Presiding Judge Jim
5 Rogers, Judge Karen Donohue, and Judge Veronica Galvan ("KCSC Defendants")
6 removed the case to this Court on the basis of federal question jurisdiction. Dkt. 1.

7 On May 3, 2021, Khandelwal moved to amend her complaint to remove alleged
8 violations of federal law and add an alleged violation of Washington State Court Rule
9 3.2. *See* Dkt. 6-1. On May 17, 2021, Defendants King County, King County Prosecuting
10 Attorney’s Office, Dan Clark, and Dan Satterberg (“County Defendants”) responded,
11 Dkt. 12, and the KCSC Defendants also responded, Dkt. 14. On May 21, 2021,
12 Khandelwal replied. Dkt. 15.

13 Khandelwal argues that she is entitled to amend her complaint as a matter of
14 course and seeks to amend her complaint to omit her federal claims because state law will
15 provide the relief she seeks. The KCSC Defendants contend that the amendment sought
16 represents “a dilatory maneuver for the purpose of gamesmanship.” Dkt. 12 at 4. The
17 County Defendants contend that the amended complaint “attempt[s] to use amendments
18 to alter and evade the legitimate federal claims in this case.” Dkt. 14 at 3.

II. DISCUSSION

20 The Court first considers whether amendment is proper under Federal Rule of
21 Civil Procedure 15. In determining whether to grant leave under Rule 15, courts consider
22 five factors: “(1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4)

1 futility of amendment, and (5) whether plaintiff has previously amended his complaint.”

2 *Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir 1990).

3 A court may deny leave to amend “where the amendment would be futile . . . or
4 where the amended complaint would be subject to dismissal.” *Saul v. United States*, 928
5 F.2d 829, 843 (9th Cir. 1991). “[A] proposed amendment is futile only if no set of facts
6 can be proved under the amendment to the pleadings that would constitute a valid and
7 sufficient claim or defense.” *Miller v. Rukoff-Sexton, Inc.*, 845 F.2d 2019, 214 (9th Cir.
8 1988), *overruled on other grounds by Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

9 Defendants’ arguments pertain to the risk of destroying the Court’s subject-matter
10 jurisdiction and whether the amended complaint could be remanded, rather than to
11 directly establishing bad faith, undue delay, prejudice, or futility.

12 While “a party may not employ Rule 15(a) to interpose an amendment that would
13 deprive the district court of jurisdiction over a removed action,” 6 Charles Alan Wright,
14 Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure: Civil* § 1477 (2d ed
15 1990), “[i]t is well settled ‘that a federal court does have the power to hear claims that
16 would not be independently removable even after the basis for removal jurisdiction is
17 dropped from the proceedings,’” *Harrell v. 20th Century Ins. Co.*, 934 F.2d 203, 205
18 (1991) (quoting *Swett v. Schenk*, 792 F.2d 1447, 1450 (9th Cir. 1986)). “It is generally
19 within a district court’s discretion either to retain jurisdiction to adjudicate the pendant
20 state claims or to remand them to state court.” *Id.* (citations omitted). The Court does not
21 find bad faith, undue delay, or prejudice in Khandelwal’s assessment that she can secure
22 complete relief asserting only claims under state law.

1 Whether this case should be remanded is a subject for a separate motion, one that
2 Khandelwal has indicated that she intends to file. Dkt. 15 at 3 n.1. Defendants may
3 present their contention that Khandelwal's complaint is artfully pleaded and not properly
4 subject to remand in response to such a motion.

III. ORDER

Therefore, it is hereby **ORDERED** that Khandelwal's motion for leave to file
amended complaint, Dkt. 6, is **GRANTED**.

8 Dated this 7th day of July, 2021.


BENJAMIN H. SETTLE
United States District Judge